

29 MAY 1996

PART 6**SEPARATION AUTHORITY**

A. Determining Separation Authority. The Chief of Naval Operations and the Commandant of the Marine Corps may delegate separation authority in accordance with the following chart.

IF the servicemember is being processed for separation by reason of...	THEN, subject to the rules at the end of this chart, the separation authority is the...
Selected Changes in Service Obligations - Inactive Reserves Selected Changes in Service Obligations - Immediate reenlistment Selected Changes in Service Obligations - Within 90 days of EAOS Expiration of Service Obligation	Commanding officer or higher
COG - Early release to further education COG - Other designated physical or mental conditions COG - Review action COG - Dependency or hardship COG - Parenthood COG - Pregnancy or childbirth COG - Personality disorder COG - Surviving family member COG - Reservist becomes a minister COG - Separation of aliens	Special Court-Martial Convening Authority (SPCMCA) or higher

29 MAY 1996

IF the servicemember is being processed for separation by reason of...	THEN, subject to the rules at the end of this chart, the separation authority is the...
<p>Weight control failure</p> <p>Entry level performance and conduct</p> <p>Unsatisfactory performance</p> <p>Drug abuse rehabilitation failure</p> <p>Alcohol abuse rehabilitation failure</p> <p>Defective Enlistments and Inductions - Erroneous</p> <p>Defective Enlistments and Inductions - Minority</p> <p>Defective Enlistments and Inductions - Defective enlistment agreements</p> <p>Defective Enlistments and Inductions - Separation from the delayed entry program</p>	<p>Special Court-Martial Convening Authority (SPCMCA) or higher</p>
<p>COG - Conscientious objection</p> <p>Selected Changes in Service Obligations - General demobilization or reduction in authorized strength</p> <p>Selected Changes in Service Obligations - Acceptance of active duty commission or appointment, or acceptance into a program leading to such a commission or appointment in any branch of the Military Services.</p> <p>Homosexual conduct</p>	<p>General Court-Martial Convening Authority (GCMCA) or higher</p>

IF the servicemember is being processed for separation by reason of...	THEN, subject to the rules at the end of this chart, the separation authority is the...
<p>Defective Enlistments and Inductions - Fraudulent entry into the naval service</p> <p>Misconduct - Minor disciplinary infractions</p> <p>Misconduct - A pattern of misconduct</p> <p>Misconduct - Commission of a serious offense</p> <p>Misconduct - Civilian conviction</p> <p>Misconduct - Drug abuse</p> <p>Security</p> <p>Unsatisfactory participation in the ready reserve</p>	<p>GCMCA or higher when the Administrative Board Procedure is used and:</p> <ul style="list-style-type: none"> - Board recommended OTH - Board recommended retention - Servicemember waived a Board; or - Servicemember requested a conditional waiver. <p>SPCMCA or higher when:</p> <ul style="list-style-type: none"> - The Notification Procedure is used; or - The Administrative Board Procedure is used and the Board recommended separation with an Honorable, General, or Entry Level Separation.
<p>Separation in lieu of trial by court-martial</p>	<p>GCMCA or higher, unless request is based only on an absence without leave for more than 30 days, then the SPCMCA is separation authority.</p> <p><u>Note:</u> see section L. of part 2.</p>
<p>Secretary Plenary Authority</p> <p>Disability</p>	<p>Secretary of the Navy</p>

Rules:

1. The Secretary of the Navy is separation authority:

a. For involuntary separation of active duty reservists within 2 years of retired or retainer pay (10 U.S.C. 12686 reference (b)).

29 MAY 1996

b. When the sole basis for separation is a serious offense that resulted in a conviction by a special or general court-martial that did not impose a punitive discharge, and an Other Than Honorable discharge is warranted.

c. When the separation authority above determines that a characterization of service as Honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of naval duty for a service member in an entry level status who is being separated by reason of Selected Changes in Service Obligation, Convenience of the Government, Disability, or Secretarial Plenary Authority (subsections B, C, D, and P of part 1).

d. When an Administrative Board finds that a preponderance of the evidence supports one or more of the reasons for separation alleged and recommends retention, but the separation authority above recommends separation.

e. When a servicemember is processed for separation by reason of misconduct - civilian conviction, and final action on the appeal has not been taken, and the servicemember does not request separation before final action on the appeal has been taken.

2. The Secretary of the Navy may assign any of his or her functions, powers, and duties hereunder to the Under Secretary of the Navy and/or the Assistant Secretary of the Navy (M&RA).

3. The Chief of Naval Operations and the Commandant of the Marine Corps are separation authority for involuntary separation of active duty servicemembers who have 18 or more years total active military service. The Chief of Naval Operations and the Commandant of the Marine Corps may delegate this authority within their respective headquarters, but not below the Chief of Naval Personnel or DCS/M&RA.

4. In separations for conscientious objection, when the GCMCA recommends disapproval, the Chief of Naval Operations or the Commandant of the Marine Corps will make final determination based in the entire record. The Chief of Naval Operations and the Commandant of the Marine Corps may delegate this authority within their respective headquarters, but not below the Chief of Naval Personnel or DCS/M&RA.

B. Separations Must Be Consistent with the Following:

1. Servicemembers must be processed for all reasons for which minimum criteria are met. However, separation authorities must choose the most appropriate reason when actually effecting the discharge.

2. If the separation authority finds legal prejudice to a substantial right of the respondent or that the findings of the Board were obtained by fraud or collusion, the case may be referred to a new Board. No member of the new Board shall have served on a prior Board that considered the case. The separation authority may not approve findings and recommendations less favorable to the respondent than those rendered by the previous Board unless the separation authority finds that fraud or collusion in the previous Board is attributable to the respondent or to an individual acting on the respondent's behalf.

3. Separation Authorities must protect against waste of funds paid for selective reenlistment bonuses, military education programs, etc., by recouping and ensuring maximum collection of indebtedness using DoD 7000.14-R, DOD Financial Management Regulation, Volume 7A, Military Pay Policy and Procedures Active Duty and Reserve, Table 7-7-6 (NOTAL).

C. Separation Authority Actions

1. No Administrative Board is Held. The separation authority shall determine whether there is sufficient evidence to verify the allegations set forth in the notification of the basis for separation. If the allegation is not supported by a preponderance of the evidence, it may not be used as a basis for separation.

a. If there is a sufficient factual basis for separation, the separation authority shall determine whether separation is warranted under the guidance in sections A and B of part 2. On the basis of that guidance, the separation authority shall direct one of the following actions:

(1) Retention;

(2) Separation for the most appropriate reason under part 1 as stated in the notification letter; or

(3) Suspend separation following guidance in section B of part 2.

(4) If the servicemember is Fleet Reserve/retired list eligible, suspend separation pending servicemembers agreement to transfer to the Fleet Reserve/retired list within 30 days.

b. When separation or suspension of separation is directed, the separation authority shall assign a characterization or description of separation following guidance set forth in part 3 and in the section in part 1 outlining the specific reason for separation.

29 MAY 1996

c. The separation authority shall make a determination as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation subject to paragraph 5 of this instruction. In making a determination on retention in the Ready Reserve, the separation authority should consider the investment in the respondent's training, probable availability for future recall and potential for useful service under conditions of full mobilization. This determination applies in cases involving separation from active duty or from the Selected Reserve.

2. An Administrative Board is Held. The separation authority, following the guidelines in section A of part 2 and the reason(s) for separation, shall take the following actions:

a. Finding and separation recommendation. If the Board finds that a preponderance of the evidence supports one or more of the reasons for separation alleged and recommends separation, the separation authority may:

(1) Approve the Board's findings and recommendations; or

(2) Approve the Board's findings, but modify the recommendations by one or more of the following actions when appropriate:

(a) Approve the separation but suspend execution as provided in section B of part 2.

(b) If the member is Fleet Reserve/retired list eligible, approve the separation but suspend execution pending servicemembers agreement to transfer to the Fleet Reserve/retired list within 30 days.

(c) Approve the separation but disapprove suspension of the separation.

(d) Change the recommended characterization of service or description to a more favorable characterization or description.

(e) Change the Board's recommendation concerning transfer to the IRR; or

(f) Approve the Board's findings but disapprove the Board's recommendation and retain the servicemember.

29 MAY 1996

(3) In every case in which characterization of service Under Other Than Honorable Conditions is recommended, the record of the Board's proceedings will be reviewed by a judge advocate or civilian attorney employed by the Military Department prior to action by the separation authority. Such review is not required when another characterization is recommended unless the respondent identifies specific legal issues for consideration by the separation authority.

b. Finding and retention recommendation. If the Board finds that a preponderance of the evidence supports one or more of the reasons for separation alleged but then recommends retention, the separation authority may:

(1) Approve the Board's findings and recommendation; or

(2) Submit the case to the Secretary of the Navy (SECNAV) recommending separation for one of the specific reasons which the Board found supported by the preponderance of the evidence. In such a case, the Secretary of the Navy may direct retention, separation or in the case of Fleet Reserve/retired list eligible personnel, suspend separation pending servicemembers agreement to transfer to the Fleet Reserve/retired list within 30 days. If the Secretary of the Navy approves separation, the characterization of service or description of separation will be Honorable, General (under honorable conditions) or an Entry Level Separation under the guidance in part 3. The separation authority must specify the evidence of record relied upon in reaching its conclusion.

c. Finding of no reason for separation

(1) If the Board finds a preponderance of the evidence does not support one or more of the reasons for separation alleged and recommends retention, the separation authority cannot separate the servicemember for that alleged reason. However, if the separation authority finds that the findings of the Board were obtained by fraud or collusion, the case may be referred to a new Board.

(2) Regardless of any Board finding in an individual case, the separation authority always retains the option of requesting separation of the servicemember by the Secretary under the Secretary's plenary authority. Prior to sending the discharge package to the Secretary, the separation authority should follow the notification procedure appropriate to this reason for separation.